

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

WOODROW BEAMER

PETITIONER

vs.

Cause No. 3:94cv43-D

UNITED STATES OF AMERICA

RESPONDENT

MEMORANDUM OPINION

The motion of the petitioner, Woodrow Beamer, filed pursuant to 28 U.S.C. § 2255, came on for consideration by this court. The petitioner seeks to challenge the validity of his convictions on two grounds: 1) that his conviction for firearm possession violates the Double Jeopardy Clause of the Fifth Amendment; and that 2) 21 U.S.C. § 841(b)(1)(B)(iii), upon which his sentence is based for a crack cocaine offense, is unconstitutional because it discriminates upon the basis of race. The United States has responded to the petitioner's motion, and has moved this court to dismiss Mr. Beamer's claims because 1) Mr. Beamer has abused § 2255; 2) his claims are procedurally barred; and 3) Mr. Beamer's claims are without merit.

Mr. Beamer is not a stranger to filing motions with this court, evidenced by the procedural history of Mr. Beamer's case detailed by the United States in their motion. Important to the determination at bar, however, is the fact that Mr. Beamer has previously filed a motion for relief under § 2255 with this court on August 7, 1991. Most important, however, is the fact that neither of the assertions presently before the court were made during trial, direct appeal from his convictions, or in this prior motion for relief under § 2255.

A movant is barred from raising jurisdictional and constitutional claims for the first time on collateral review unless he demonstrates cause for failing to raise the issue on direct appeal and actual prejudice resulting from the error.

United States v. Patten, 40 F.3d 774, 776 (5th Cir. 1994). Mr. Beamer's failure to raise these claims in his first § 2255 motion are subject to the same standard:

A second or later Section 2255 motion, which raises claims for the first time, is generally subject to dismissal for abuse of the motion. However, if movant can show cause for failing to raise the claims earlier, and prejudice from the errors of which he complains, the motion is not subject to dismissal.

United States v. Flores, 981 F.2d 231, 235 (5th Cir. 1993). As previously noted, neither of the petitioner's claims have been raised prior to the present motion. This court, then, must determine if Mr. Beamer has sufficiently shown cause and prejudice as required in order to now assert these claims.

The only reason that petitioner presents explaining his failure to raise these matters earlier is the legal "novelty" of the arguments. The United States, however, points out that these same issues have been litigated in federal courts for some time and are anything but novel. E.g., United States v. Fisher, 22 F.3d 574, 579 (5th Cir. 1994); United States v. Smith, 962 F.2d 923, 932-33 (9th Cir. 1992); United States v. Galloway, 951 F.2d 64, 65-66 (5th Cir. 1992); United States v. Dixon, 558 F.2d 919, 921 (9th Cir. 1977). This court agrees. Mr. Beamer has insufficiently shown to this court cause why he has failed to raise these claims in earlier proceedings. In that the petitioner has failed to show cause, this court need not address whether Mr. Beamer has demonstrated that he has suffered prejudice from these alleged

errors.

The motion of the United States in this matter shall be granted, and the petitioner's motion shall be dismissed. A separate order in accordance with this opinion shall issue this day.

THIS _____ day of March, 1995.

United States District Judge

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RESPONDENT

ORDER DENYING RELIEF
PURSUANT TO 28 U.S.C. § 2255

Pursuant to a Memorandum Opinion issued this day, it is hereby
ORDERED THAT:

1) the motion of the United States to dismiss the
petitioner's motion for relief under 28 U.S.C. § 2255 is hereby
GRANTED.

2) the motion of the petitioner for relief under 28 U.S.C.
§ 2255 is hereby DISMISSED with prejudice.

All memoranda, depositions, affidavits and other matters
considered by the court in denying the defendant's motion for
summary judgment are hereby incorporated and made a part of the
record in this cause.

SO ORDERED, this the _____ day of March, 1995.

United States District Judge